

**TELFORD & WREKIN COUNCIL
CABINET – 18th MARCH 2021**

**TITLE: DEFINITIVE MAP MODIFICATION ORDERS – POLICY AND
PROCEDURES**

REPORT OF DIRECTOR: PROSPERITY AND INVESTMENT

LEAD CABINET MEMBER – CLLR CAROLYN HEALY

PART A) – SUMMARY REPORT

1. SUMMARY OF MAIN PROPOSALS

- 1.1 The Council is undertaking a major transformation of how Public Rights of Way are managed by the Authority, including the digitisation of the Definitive Map and its Statement, other records and data, the processing of orders, and the categorisation of the Public Rights of Way in the Borough.
- 1.2 The Definitive Map and Statement is the official record of footpaths, bridleways, restricted bridleways and bypasses open to all traffic. A Definitive Map Modification Order (DMMO) is a method by which the Definitive Map and Statement can be changed where it is believed there is an error or omission. A DMMO cannot create access rights that do not currently exist, remove rights that do not exist or divert paths onto a preferred route, it is only concerned with modifying the definitive map to show the rights that legally exists; this includes through the evidence of a claimed route for a historic right of way. The decision on whether or not to make such a correction is based purely on the evidence of what public rights exist and it is important to understand that the process is not concerned with issues of management of the ways, desirability of the routes or other such matters.
- 1.3 The Wildlife and Countryside Act 1981 requires Local Authorities to keep a register of all applications for a Definitive Map Modification Order and this register must be made available to the public.
- 1.4 This report sets out the proposal to adopt a new policy and procedure that will clearly identify how the Council will prioritise and determine outstanding and new applications to modify the Definitive Map. Consequently, the Council will be able to determine decisions more efficiently through a transparent and defined process.

2. RECOMMENDATIONS

It is recommended that Cabinet:

- 2.1 Approves the Definitive Map Modification Order Policy.

2.2 Delegates authority to the Director of Prosperity and Investment in consultation with the Cabinet member for Visitor Economy, Historic & Natural Environment and Climate Change to periodically review and amend the policy as required.

3. SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Co-Operative Council priority objective(s)?	
	Yes	- Improve the health and wellbeing of our communities and address health inequalities through the provision of Public Rights of Way throughout the borough.
	Will the proposals impact on specific groups of people?	
	No	
TARGET COMPLETION/DELIVERY DATE	The Policy will become effective immediately following approval, and procedures henceforth will adhere to the Policy.	
FINANCIAL/VALUE FOR MONEY IMPACT	Yes	The proposal to adopt a new policy and procedure to change the Definitive Map modification order will place no additional financial pressure on the Council. The review of applications will continue to be met from within current resource levels.
LEGAL ISSUES	Yes	As with all the Council's decisions the decision making process with regard the processing of applications to modify the Council's Definitive Map must be rational and evidence-based. The Policy document that is being presented to the Committee will assist the Council's decision by ensuring that the process of determining an application to modify the Council's Definitive Map is undertaken in accordance with a process that is transparent and consistent. The published policy provides that as a starting position the Council will remain neutral in applications to modify the Definitive Map. The Council may lawfully take a neutral stance in any particular application to modify the Definitive Map, the policy will assist in making sure that the Council's position as regards its approach at the Secretary of States determination stage is clear, consistent,

		transparent, cogent and based on evidence. The Council's policy of taking a neutral stance at Secretary of State's determination stage will need to be subject to specific consideration in each case in order to ensure that the Council is acting lawfully i.e. it is the starting point rather than a blanket approach to be applied without the application of any discretion.
OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	The proposal will allow the determination of existing modification order applications and therefore actively enable legal modifications of Public Rights of Way across the borough, this has the potential to increase sustainable connections within local areas, to the benefit of communities, economy, and public health.
IMPACT ON SPECIFIC WARDS	No	Borough-wide impact

PART B) – ADDITIONAL INFORMATION

4. INFORMATION

- 4.1 The Definitive Map and Statement (DMS) provides a record of public rights of way in Telford & Wrekin and under Section 56 of the Wildlife & Countryside Act 1981 is conclusive evidence that at the Relevant Date the public had, at least, the rights shown on the Map without prejudice to the possibility of the existence of higher rights over a particular way.
- 4.2 Every Surveying Authority must keep a Definitive Map and accompanying Definitive Statement. This is a document recording public rights of way. It includes four categories of right of way, which are all public highways:
- Footpath (FP) – a public right of way on foot only
 - Bridleway (BR) – a public right of way on foot, horseback or bicycle
 - Restricted Byway (RB) – a public right of way including all the above in addition to non-motorised vehicles
 - Byway Open to All Traffic (BOAT) – a public right of way open to all the above and motor vehicles
- There are also a matching series of written statements that describe the ways shown on the maps.
- 4.3 The Definitive Map was first prepared under the provisions of the National Parks and Access to the Countryside Act 1949, and the last publication was made in 1965. Since this date there have been hundreds of legal events changing the definitive map since it was published which include extinguishments; diversions; and creations of rights of way – these are not shown on the definitive map, but are recorded on separate legal documents called Legal Event Modification

Orders. There have also been a number of confirmed Evidential Event Modification Orders that have changed the definitive map. Again, these are not shown on the definitive map but are recorded on separate legal documents. Therefore the Council has been bringing these documents together to publish a New Definitive Map and Statement, and is currently in the final stages and a working copy has been made available online.

- 4.4 Under the provisions of the Wildlife and Countryside Act 1981, Telford & Wrekin Council as Surveying Authority has a duty to keep the DMS under continuous review, and therefore when evidence becomes available that there is an error, inaccuracy or omission on the DMS, that the DMS should be modified as soon as is reasonably practicable by means of a legal order (known as Definitive Map Modification Order [DMMO]).
- 4.5 Under the provisions of the Wildlife and Countryside Act 1981, a Definitive Map Modification Order may be applied for by anyone who considers that a public right of way is either:
1. Not recorded on the Definitive Map and Statement, or
 2. Recorded on the Definitive Map and Statement but should be shown as a way of a different status, or
 3. Recorded on the Definitive Map and Statement but should no longer be recorded.

Applications must be supported by evidence, which can be either:

- evidence of use
- evidence contained in historic documents

- 4.6 There are currently approximately 120 outstanding DMMO applications registered with the council awaiting determination. The process to date has been led by the council, being the main party to collate such evidence to support the DMMO application. However this has a significant impact on resource, and limits the number of DMMO's which can be processed. Therefore in order to determine these applications, the Council proposes to adopt a neutral approach to these applications, and the onus to provide sufficient evidence to support these application is passed to the applicant.
- 4.7 The proposed policy clearly sets out how the Council will prioritise, process and determine outstanding and new applications to modify the definitive map. We will then review all our procedures for processing and determining applications to modify the definitive map and, where necessary, restructure them in accordance with the new policy. In supporting this new process the applications will be made available online, displaying any consultation responses and evidence received, in a similar way planning applications are made available online. This will make the process transparent and promote engagement, in addition to making efficiencies. The Council will then review all outstanding applications to modify the definitive map by summer 2021 – i.e. establish the evidence that has been submitted and consulted with all relevant parties.
- 4.8 The procedure for modifying the Definitive Map can be summed up as a two stage process. The first step is for the Council to determine whether it has enough evidence to determine that the Definitive Map needs to be modified by reference to tests contained in the Wildlife and Countryside Act 1981. If the Council determines that it is necessary to modify the Definitive Map it must publish a DMMO to that effect. Once the DMMO has been published the owner of the land on which the new/modified right of way will exist can object to the published order.

- 4.9 If the owner of the land on which the new/modified right of way will exist does object to the publication of the DMMO the matter is referred to the Secretary of State for determination. This second step in the process will involve the relevant parties (i.e. the Council, Landowner and any other interested party for example the Parish Council or British Horse Society etc.) making representations to the Secretary of State at either a Public Inquiry or via a Written Representations procedure as to whether the new/modified right of way should be confirmed or not.
- 4.10 It is the case that the Council can choose to support, oppose or take a neutral stance regarding the new/modified right of way at the stage at which the Secretary of State makes a determination regarding the DMMO.
- 4.11 It is important to recognise that supporting or opposing an order at the Secretary of State's determination phase involves a great deal of officer time and resource as in effect the Council is acting as a party with an active role in and vested interest in the disputed matter. This would involve drafting statements of case, presenting evidence and actively advocating at the determination stage.
- 4.12 If the Council takes a neutral stance at the Secretary of State's determination stage it is still obliged to play a role in collating information on behalf of the Secretary of State however this role is greatly reduced in comparison with presenting a case in favour of or against the application to modify the Definitive Map and is much closer to acting as an administrator of the process. This may involve providing accommodation for a Public Inquiry or providing contact information for those parties with an active role and vested interest in the disputed matter. If the Council is taking a neutral stance at this stage the obligation to present a case in favour of the DMMO would fall on the original applicant.
- 4.13 The proposed policy provides that it is the Council's starting position to take a neutral stance at the Secretary of State's determination phase. This approach has been taken because it is often the case that the Council has no vested interest in applications to modify the Definitive Map other than in its role as the entity provided with the responsibility by statute to maintain and administer the Definitive Map. As set out in the legal comment above the Council's policy of taking a neutral stance at Secretary of States determination stage will need to be subject to specific consideration in each case in order to ensure that the Council is acting lawfully i.e. it is the starting point rather than a blanket approach to be applied without the application of any discretion.
- 4.14 The Council has consulted in respect of the policy and in doing so it has undertaken the following steps:
1. Consultation packs were sent on the 18/12/2020 to:
 - All Ward Members
 - All Town and Parish Councils
 - All statutory consultees for Definitive Map Modification Orders (e.g. The Ramblers Association; the British Horse Society; etc.)
 - The Local Access Forum
 2. An extraordinary meeting of the Local Access Forum was held on the 14/12/2020 to discuss the consultation
 3. Officers attended a Town and Parish Council Forum on the 20/01/2021 to answer questions about the consultation

4. The consultation was advertised and delivered to the population of the Borough via the Council's website on the 18/12/2020

- 4.15 There were 28 responses to the consultation, with 9 of those responses not supporting the proposed Policy. The main reasons given for not supporting the Policy were that the Council should take the initiative and responsibility for:
- Identifying issues on the Definitive Map that require resolution
 - Collating evidence to support applications
 - Presenting the case and supporting evidence at a Public Inquiry
 - The voluntary role of applicants was stressed, and the need for the Council to support their work.

In response to the feedback, officers have considered these issues however has not proposed to alter the Policy for the following reasons:

- The Policy refers to applications to modify the Definitive Map and does not preclude the Council from pro-active review should it choose to do so; thus still allowing the Council to prepare our own modification orders.
- The collation of evidence, particularly where the application relies on statements of use, should come from the applicant in most cases because they have the knowledge to support their claim
- Officers acknowledge the voluntary role of applicants and particularly where this involves presenting evidence at Public Inquiries, but would point out that objectors to Orders are already obliged to collate evidence and present their own cases if necessary.

5 IMPACT ASSESSMENT – ADDITIONAL INFORMATION

- The Council will more efficiently and rapidly reduce and progress the outstanding Definitive Map Modification Order applications providing clarity on these claims i.e. whether a right of way does or does not exist.
- The Council will provide a transparent and defined process for responding to and determining new applications that meets current statutory requirements, and is adaptable to reflect changes in legislation.

6 PREVIOUS MINUTES

NA

7 BACKGROUND PAPERS

Appendix – DMMO Policy and procedures

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